

**FILED**

**FEB 16 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SCOTT EDWARD WHITNEY,

Defendant - Appellant.

No. 05-10236

D.C. No. CR-03-00313-PMP

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Nevada  
Philip M. Pro, Chief District Judge, Presiding

Submitted February 13, 2006<sup>\*\*</sup>

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Scott Edward Whitney appeals from his guilty-plea conviction and 63-month sentence imposed for possession of unauthorized access devices, in violation of 18 U.S.C. § 1029(a)(3).

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), counsel for Whitney has filed a brief stating there are no grounds for relief, and a motion to withdraw as counsel of record. Whitney has not filed a pro se supplemental brief.

Because our independent review of the record pursuant to *Penon v. Ohio*, 488 U.S. 75, 82-83 (1988), indicates that Whitney knowingly and voluntarily waived his right to appeal and was sentenced within the terms of the plea agreement, we enforce the waiver and dismiss the appeal. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000) (stating that an appeal waiver is valid when it is entered knowingly and voluntarily).

Counsel's motion to withdraw is **GRANTED**, and the appeal is **DISMISSED**.